

Transcript of James Leavitt
Conducted on October 8, 2021

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1 Q Did you start the company?

2 A I did.

3 Q Could you tell me a little bit about it?

4 A We started in 1977 making handmade pottery
5 and basically we have been in business ever since.

6 Q Just doing pottery?

7 A Yes.

8 Q So you don't manufacture anything other
9 than pottery?

10 A No.

11 Q And do you provide any services other than
12 selling your pottery?

13 A Like what?

14 Q Well, how about repair of pottery?

15 A No, not in general.

16 Q And you don't operate -- let me rephrase
17 that. Do you have a store?

18 A Yes.

19 Q And where is that located?

20 A It's on the premises.

21 Q I'm sorry?

22 A It's on the premises near the

Defendants'
Exhibit 1

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1 Q Why not?

2 A I don't think it's a worthwhile enterprise
3 at this point.

4 Q Have you ever considered expanding your
5 business beyond pottery?

6 A What do you mean by that exactly?

7 Q Have you considered selling any products
8 other than pottery?

9 A Sure. We sell some candles at this point
10 as part of our line, yes.

11 Q What else do you sell in your store?

12 A In the store?

13 Q Yes.

14 A I think that they have soaps, some display
15 materials, baking mixes, that sort of thing.

16 Q How about through the internet? The same
17 type of products?

18 A No, the internet is just pottery, and
19 candles.

20 Q And candles?

21 A Yes.

22 Q And you just purchase those candles from a

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1 third party?

2 A No, we make them.

3 Q Oh, you make them?

4 A Uh-hmm.

5 Q How long have you been making candles?

6 A It's probably been going on a year, close
7 to it.

8 Q Okay. So I understand -- well, what
9 trademarks do you own?

10 A Emerson Creek Pottery and the logo.

11 Q Okay. Anything else? Any others?

12 A I don't think so. Garfield could speak to
13 that better.

14 Q Okay. Maybe we will notice Garfield for a
15 deposition sometime.

16 Do any of these retailers that you sell
17 your products to, are they authorized to use the
18 Emerson Creek Pottery name as part of their store
19 name?

20 MR. WILLETT: Object to form. Answer if
21 you can.

22 Q Do you understand the question?

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1 MR. WILLETT: Object to form.

2 A Not really, because those were urban
3 locations. This was going to be another
4 farmhouse-type setting, similar to what we have on
5 our premises.

6 Q So I guess my question is, were you
7 thinking in terms of them replicating what you
8 were doing in Bedford out in Illinois?

9 A That's the way they represented it,
10 correct.

11 Q And you agreed to that?

12 A Yes.

13 Q Can you describe for me how your
14 relationship with Christina Demiduk has evolved
15 since that first meeting?

16 MR. WILLETT: Object to form.

17 A That's a long story. You know, we did a
18 lot of business together. I thought we got along
19 well. She communicated with me a lot over the
20 years, mostly by email, some with phone, about
21 what she was doing, what her plans were, what she
22 was buying from us. I'd say over the years, more

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1 recently we have not communicated very much. She
2 bought less pottery.

3 Q Is she buying any pottery today?

4 A No, it's been a couple of years since
5 she's bought any.

6 Q The agreement that you had with
7 Ms. Demiduk, was that ever reduced to writing?

8 A Yes.

9 Q When?

10 A It goes right back to when we -- probably
11 right after we had met.

12 Q Do you have a copy of that agreement?

13 A Yeah, I think we produced it.

14 MR. LAUBSCHER: I'm going to make a
15 request -- I don't remember seeing such an
16 agreement. So if there is one, or if you produced
17 it, identify it, I'll be happy to look at it.
18 Otherwise I'm going to make a request that that
19 agreement be produced.

20 MR. WILLETT: It has been produced.

21 MR. LAUBSCHER: Okay. Do you know the ECP
22 number?

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1 MR. GOODRUM: 2672? I will check just
2 real quick.

3 MR. McLAUGHLIN: Are you referring to the
4 agreement that's titled "Agreement between Ron
5 Wehrli and Emerson Creek Pottery" 3/23/01? Is
6 that what you're identifying?

7 MR. GOODRUM: Yeah. What was the number
8 again, please, Ken?

9 MR. McLAUGHLIN: 782 to 783. That's what
10 you're talking about; is that right?

11 MR. GOODRUM: Yes, that's right.

12 BY MR. LAUBSCHER:

13 Q So who are the parties to the agreement?

14 A It was Ron Wehrli, who was the primary
15 financial backer.

16 Q And yourself?

17 A Yes. And I would say Chris as they were
18 partners together, as far as I know.

19 Q And what about your company? Was it a
20 party to the agreement?

21 A Well, yeah. I mean, I consider myself the
22 representative of the company, so yeah.

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1 Q Was this a license agreement?

2 MR. WILLETT: Object to form.

3 A Yeah, I would say it was, in a sense.

4 Q And what trademark was being licensed?

5 A I don't believe that that's actually
6 mentioned in there. It would have been, I guess,
7 the assumption is it's Emerson Creek Pottery,
8 Emerson Creek.

9 Q Are you saying both Emerson Creek Pottery
10 and --

11 A We think of ourselves as both, so yes.

12 Q When you say "we think of ourselves as
13 both," could you explain --

14 A Well, we go by Emerson Creek and Emerson
15 Creek Pottery interchangeably.

16 Q So in your advertising since you opened
17 the company, sometimes you use Emerson Creek
18 Pottery and sometimes you use Emerson Creek?

19 A Probably, I'd have to go back and look,
20 you know.

21 Q What are you currently using today?

22 A Well, we're not currently advertising at

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1 the moment.

2 Q Well, on your signage and on your website,
3 how are you identified?

4 A It's mostly as Emerson Creek Pottery.

5 Q Mostly or exclusively?

6 A I wouldn't -- without going through the
7 website and looking at every page, I couldn't tell
8 you. But I would say mostly Emerson Creek
9 Pottery.

10 Q And was there a fee involved in connection
11 with this license?

12 A No.

13 Q Were there any royalty payments involved?

14 A No.

15 Q And what goods or services were authorized
16 to be provided under this agreement?

17 A That they were going to sell -- the
18 understanding was they would sell our pottery.

19 Q Were they allowed to sell anything else?

20 A The understanding was no other pottery and
21 that the majority of the products in the store
22 would be our pottery, but there could be

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1 accessories that go along with it.

2 Q Was there a term to this license? In
3 other words, was it year to year?

4 A No.

5 Q Were there any provisions in the license
6 to resolve a breach if somebody didn't behave
7 under the terms of the agreement?

8 A It was not a document drawn up by a lawyer
9 that had that kind of language in it, no.

10 Q So there were no breach provisions in the
11 agreement?

12 A Not directly. I mean, part of it said
13 that they had to sell -- they had to do certain
14 things to keep using our name.

15 Q Right, but I'm saying suppose they didn't
16 sell certain --

17 A Well, the implication being if they didn't
18 do it, then they can't do it. That's the
19 implication.

20 Q Did the license authorize Mr. Wehrli and
21 Ms. Demiduk to manufacture pottery on their own
22 and sell it under the Emerson Creek Pottery mark?

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1 A No.

2 MR. WILLETT: I would object just on the
3 grounds that he's referenced a document that
4 obviously hasn't been provided to him. But
5 continue, answer if you can.

6 Q I'm sorry. Was your answer no?

7 A Yeah.

8 Q Thank you. So the agreement authorized --
9 or let me rephrase that.

10 Did the agreement authorize Mr. Wehrli and
11 Ms. Demiduk to use both Emerson Creek Pottery and
12 Emerson Creek?

13 A I would say yeah.

14 Q Were there any restrictions as to how
15 either of those marks were to be used? In other
16 words, in a stylized fashion or printing them in a
17 certain size?

18 A It was not that kind of a detailed
19 agreement.

20 Q Were there any restrictions as to how
21 either of those marks could be used in advertising
22 or promotion by the Demiduks -- or Mr. Wehrli and

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1 Ms. Demiduk?

2 A No, there is no mention of that, either
3 one.

4 Q Did you ever visit the store that -- or
5 the shop that Mr. Wehrli and Ms. Demiduk opened?

6 A No.

7 Q Is the license still in effect today?

8 A Yes, I would say it would be. Well, I
9 take that back. I believe at some point recently
10 when we told them they were in breach of it, but
11 up until that point it was.

12 Q So you just used the term "breach," which
13 I mentioned earlier, and I asked you about breach
14 provisions in the license. I think you --

15 A There's nothing there, right, there's
16 nothing in that agreement that we're referring to.

17 Q Right, so when notice was sent them that
18 they were in breach, but did the license still
19 continue in force after that?

20 MR. WILLETT: Object to form.

21 A Was it in force?

22 Q Right.

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1 A What do you mean by that?

2 Q Well, you entered into an agreement back
3 in 2000; is that correct?

4 A Yes.

5 Q And is that agreement still in existence
6 today?

7 MR. WILLETT: Object to form.

8 A I think that they were put on notice that
9 they were in breach of it because of their
10 actions, so the answer would have to be no.

11 Q So it's your understanding, then, that the
12 license has been terminated?

13 A Correct.

14 Q And they are no longer allowed to use
15 Emerson Creek or Emerson Creek Pottery?

16 A Correct.

17 Q How -- strike that.

18 Was this agreement signed by Mr. Wehrli
19 and Ms. Demiduk? Her -- I think she had a
20 different name at that point, but I can't remember
21 what it was.

22 A No.

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1 Q It was not signed. Was it signed by you?

2 A No.

3 Q Do you have any -- to your knowledge, did
4 Mr. Wehrli and Ms. Demiduk agree to all of these
5 points in the license?

6 A Yes.

7 Q Are there any written documents that would
8 verify that they agreed to these terms?

9 MR. WILLETT: Object to form.

10 A Not to my knowledge.

11 Q Is Mr. Wehrli still involved in the
12 business?

13 A No, I do not believe so, no.

14 Q Can you tell me, describe for me briefly
15 what your relationship was with Mr. Wehrli during
16 the time that he was involved in the business?

17 A We would talk from time to time. We
18 didn't have a -- most of my dealings were with
19 Chris.

20 Q Do you know what Mr. Wehrli's involvement
21 was in running the shop?

22 A I believe he was mostly involved with

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1 finances.

2 Q Okay. Do you know whether he made any
3 decisions as to what products were stocked in the
4 shop?

5 A I don't have a way of knowing that.

6 Q So most -- is it fair to say that most of
7 your dealings with Mr. Wehrli were in connection
8 with finances?

9 A Yes.

10 Q And that would be payment of -- for --

11 A Invoices.

12 Q -- pottery that they purchased from you?

13 A Correct.

14 Q Would you say that the -- Ms. Demiduk and
15 Mr. Wehrli were wholesale customers of yours?

16 MR. WILLETT: Object to form.

17 A In a sense they were, yes.

18 Q Did you control -- have any control over
19 their pricing of the products that they purchased
20 from you, their pricing that they would pass along
21 to customers?

22 A No.

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1 Q But you did control obviously the prices
2 of the products that you sold to them?

3 A Yes.

4 Q Were those products sold at a wholesale
5 price?

6 A They're sold at a discount.

7 Q Was that the same discount that you -- or
8 strike that.

9 Do you provide the same discount to your
10 other retail outlets that purchase from you today?

11 A No.

12 Q Was that discount greater?

13 A Yes.

14 Q Are you aware that Ms. Demiduk used other
15 names for her shop beyond Emerson Creek Pottery?

16 MR. WILLETT: Object to form.

17 A It was called Country View Pottery, I
18 think.

19 Q Okay. Did she ever use the mark "Emerson
20 Creek Pottery & Tearoom"?

21 A Yes.

22 Q Did you object to that?

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1 A No.

2 Q Was Emerson Creek Pottery & Tearoom one of
3 the marks that was included in the license
4 agreement from 2000?

5 A It was not directly in that agreement, but
6 it would have fallen under the general terms of
7 Emerson Creek Pottery and the uses of it, I would
8 say.

9 Q Do you know when Ms. Demiduk began using
10 Emerson Creek Pottery & Tearoom?

11 A 2004, 2006; I'm not sure.

12 Q Did Ms. Demiduk ask you if she could
13 expand her pottery shop into -- adding on a
14 tearoom?

15 A She told me that she was planning to. She
16 kept me up with her ideas and plans to do all of
17 that; yes, I knew all about it.

18 Q And you agreed to that?

19 A I did.

20 Q Did -- were you aware that she also
21 expanded into -- for the tearoom, into a
22 restaurant?

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1 A Yep.

2 Q Do you know when that was?

3 A I don't remember what year, no.

4 Q Did you object to her transitioning into a
5 restaurant?

6 A Well, to me they were both the same, but
7 no, it would fall under the same category, yeah.

8 Q Were you aware that Ms. Demiduk further
9 expanded her business to include hosting weddings?

10 A Yes.

11 Q Do you remember when that was?

12 A It might have been 2010, 2011.

13 Q And did you object to her use of --

14 A I did not. She told me of her plans in
15 some detail, yes.

16 Q Okay. Did you ever inspect the facility
17 that Ms. Demiduk was using to provide both the
18 restaurant services and the wedding hosting
19 services?

20 A No, I did not.

21 Q So I believe you testified earlier that at
22 some point Ms. Demiduk breached the agreement.

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1 Can you tell me exactly what activities she did
2 that breached the agreement?

3 MR. WILLETT: Object to form.

4 A Yeah, I discovered that she was selling
5 other pottery in her store.

6 Q And what did you do when you discovered
7 she was selling other pottery?

8 A That's when we sent her a notice that she
9 was in breach.

10 Q And is that when the license was
11 terminated?

12 A Yes.

13 Q Do you recall when that was?

14 A I think it was in the 2017 range. I don't
15 remember the date.

16 Q So between 2000 when you started your
17 relationship with Ms. Demiduk and Mr. Wehrli, and
18 2017 when you terminated the license, how would
19 you characterize, up until -- up until you found
20 that they were selling third-party pottery, how
21 was the relationship between you and the
22 defendants?

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1 right-hand portion of the first page, you'll see
2 there was an application filing date of April 5th,
3 2017.

4 Do you see that?

5 A Uh-hmm. Yes.

6 Q Can you explain why you decided to file an
7 application on your logo in 2017 when you filed
8 the first application in 2015?

9 MR. WILLETT: Object to form. And object
10 to the extent it calls for the revelation of
11 attorney-client communications. Answer if you can
12 without revealing such communications.

13 A On the advice of my patent attorney.

14 Q Okay. And who was your patent attorney at
15 this time?

16 A Garfield, uh-hmm.

17 Q All right. If you turn to the second
18 page, about -- there's three different breakdowns
19 where it describes goods and services followed by
20 the word "for." And in the middle, kind of in the
21 middle of the page, you see it says "For retail
22 store services."

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1 Do you see that?

2 A Yes.

3 Q And then below that, the next one for, it
4 says, "Restaurant services, rental of banquet and
5 social function facilities."

6 A Uh-hmm.

7 Q Do you provide retail store services for
8 ceramic -- featuring ceramic sculptures, et
9 cetera?

10 A Retail, yes.

11 Q And then how about the restaurant
12 services, banquet and social function facilities
13 for wedding receptions and birthday parties?

14 MR. WILLETT: Object to form.

15 Q Do you provide those services?

16 A Not at this time.

17 Q When you filed this application back in
18 2017, did you intend to use your logo mark in
19 connection with those services?

20 MR. WILLETT: Same objection.

21 A Possibly.

22 Q Can you explain -- but are you currently

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1 providing the restaurant services, the rental of
2 banquet and social function facilities?

3 MR. WILLETT: Same objection.

4 A No.

5 Q So what's -- I want to know why you
6 haven't -- you filed an application, you recited
7 those services four years ago. Why has there been
8 a delay in actually using your mark in connection
9 with those services?

10 MR. WILLETT: Object to form.

11 A Well, a combination of factors: Lack of
12 employees, management, et cetera. It's hard to
13 run a small business and expand into other areas.

14 Q As we sit here today, do you still intend
15 to use your logo mark in connection with these
16 restaurant services, the banquet and social
17 function facilities?

18 A Possibly.

19 Q What plans do you have currently to --

20 A Currently, I don't have any formal plans
21 at the moment.

22 Q At the time this application was filed,

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1 were you aware that the Demiduks were providing
2 those types of services?

3 MR. WILLETT: Object to form.

4 Q And when I say "those types of services,"
5 I mean the ones, the restaurant services, the
6 banquet and social function facilities for wedding
7 receptions and birthday parties.

8 MR. WILLETT: Same objection.

9 A Yes, they kept me informed of what they
10 were doing.

11 Q Okay. All right. The next document.

12 (Exhibit 3 was marked for identification
13 and is attached to the transcript.)

14 Q Now, this one has been previously marked
15 and ECP 00782 and 783. Do you see that up in the
16 upper left-hand corner of the document? Do you
17 see that?

18 A Oh, yeah, I'm sorry.

19 Q Have you seen this document before?

20 A Yes.

21 Q Was this the agreement that you testified
22 to earlier between yourself and -- or Emerson

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1 Q And when did you send the investigators to
2 inspect her shop to see if there were third-party
3 sales of pottery?

4 A I think it was '17, '18.

5 Q So it was after this time?

6 A Yes, yes.

7 Q You didn't act on anything other than
8 inquiring --

9 A Yeah.

10 MR. LAUBSCHER: All right. I don't think
11 I have any more questions, but if we could just
12 take a quick break, I want to touch base with Ken
13 just to make sure that I haven't overlooked
14 something that he might have wanted me to address.

15 (A recess was taken from 12:01 p.m. to
16 12:10 p.m.)

17 MR. LAUBSCHER: I don't have any further
18 questions.

19 MR. WILLETT: No questions. He will read.

20 THE STENOGRAPHER: I just need to ask you
21 on the record if you want this transcribed.

22 MR. LAUBSCHER: Please.